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Adequate housing as a component of the right to an adequate standard of living

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, submitted pursuant to Human Rights Council resolutions 15/8 and 25/17.

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Summary

In the present report, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Leilani Farha, outlines how the right to adequate housing must guide the development and implementation of a "new urban agenda" to be adopted at Habitat III, in October 2016.

Habitat III will be the first global summit of the twenty-first century where housing and urban challenges will be in the spotlight. At a time when more than half the world's population lives in cities, with the majority of urban dwellers facing homelessness, lacking security of tenure or living in inadequate conditions, and a third of them living in informal settlements, the Special Rapporteur argues that the change needed is a new "urban rights agenda" with the right to housing at its core.

The report focuses on the transformational qualities of the right to adequate housing in cities and its ability to bring coherence to the broad range of issues that will be discussed at Habitat III. In this context, the Special Rapporteur discusses five critical cross-cutting areas that must be given priority: (a) social exclusion: stigmatization and housing status; (b) migration; (c) vulnerable groups; (d) land and inequality; and (e) informal settlements. The Special Rapporteur highlights how the right to adequate housing establishes accountability and facilitates access to justice and the participation of marginalized groups in decisions that affect their lives, and lays out steps for implementation.

The report concludes with bold recommendations for the urban rights agenda, including: (a) eliminating homelessness and forced evictions; (b) ensuring security of tenure for all households; and (c) ensuring the incorporation of the right to housing as paramount in all urban law, policy and programmes, including fiscal policy and resource allocation.

I. Introduction

1. The present report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, is submitted pursuant to Human Rights Council resolutions 15/8 and 25/17.

2. In accordance with General Assembly resolution 66/207, the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) will be held in Quito from 17 to 20 October 2016. The objective of Habitat III — the third in a bi-decennial series of global housing conferences — is to establish a "new urban agenda" aimed at ensuring sustainable urban development, confronting poverty and addressing new and emerging urban challenges over the next 20 years.[1]

3. Habitat III will be the first global conference of the twenty-first century where housing and urban challenges will be in the spotlight. It will also be the first summit following the expected adoption by the General Assembly of the sustainable human development goals in September 2015. As such it offers a unique occasion to zero in on the task of implementing the commitments in the sustainable development goals as they relate to housing in the urban context. Habitat III will also be enriched by the lessons learned from the previous global housing conferences, Habitat I and Habitat II, as well as the pursuit of the Millennium Development Goals.

4. Urbanization represents the dominant force of our time and the greatest single challenge with respect to the realization of the right to housing. More than half the world's population now lives in cities and towns, with the level of urbanization increasing each year. In the 25 years from 1990 to 2015, the urban population increased by 2 billion.[2] By 2050 it is projected that 66 per cent of the world's population will be urban (adding 2.5 billion people), with 90 per cent of the increase in Asia and Africa. Today, the most urbanized regions include North America (82 per cent), Latin America and the Caribbean (80 per cent) and Europe (73 per cent). Asia is now home to 53 per cent of the world's urban population, with projections pointing at 64 per cent by 2050.[3] Urbanization has changed ways of thinking, governing, communicating and resolving disputes. It has created new forms of community and identity and transformed the use of space. It has deeply impacted all social, political and economic relations.

5. Behind these dramatic statistics of urban population growth are the lived experiences of millions of women, men and children who migrate to cities in search of security and well-being. Migration from rural to urban centres or from other countries sometimes occurs as a consequence of desperate situations, including natural disasters, conflict, development-based displacement, unemployment or the inability to maintain a livelihood. Those affected are often recovering from trauma and loss. Marginalized groups also experience migration in particular ways. For example, people with mental and physical disabilities, street children, and women

[1] For further information on Habitat III and its predecessors, see www.habitat3.org/.

[2] World Health Organization and United Nations Children's Fund, Joint Monitoring Programme for Water Supply and Sanitation, *Progress on Sanitation and Drinking Water: 2015 Update and MDG Assessment* (June 2015), available from www.wssinfo.org/.

[3] United Nations, Department of Economic and Social Affairs, Population Division, *World Urbanization Prospects: The 2014 Revision, Highlights* (United Nations publication, Sales No. E.14.XIII.8) (New York, 2014).

and youth escaping household violence have distinct needs and move to cities with the hope of securing necessary support, schools, health centres, housing, work, safety, and most importantly, dignity. Others migrate to cities in search of new opportunities.

6. Urbanization has generally been associated with development and progress, but current models of economic development have primarily benefited already advantaged groups. Urban growth has been synonymous with astonishing accumulation of wealth for a few, accompanied by increasing poverty for many. Rapid development of luxury housing in cities has occurred alongside the growth of informal settlements in which millions suffer in varying degrees from poor sanitation, lack of access to clean water, overcrowding and makeshift structures. A full third of urban dwellers in the developing world live in slum-like conditions. In developed countries as well, greater inequality under new economic models has meant that homelessness[4] has increased even during times of economic prosperity and then become worse during times of austerity.[5] On its current path, where "progress" forsakes the right to adequate housing for many, urbanization is simply unsustainable.

7. Many serious challenges facing cities are housing-related. Failure to address the housing needs of growing populations has created spatially divided cities, keeping many groups in poverty and poor living conditions, with little access to opportunities for a better future (see A/63/275). Housing has increasingly been treated as a market commodity rather than a social good and a fundamental human right, left to individuals and households and the forces of increasingly unregulated markets rather than being made subject to coordinated government policies and human rights commitments.

8. Systemic patterns of inequality, exclusion and lack of adequate housing for large numbers of city inhabitants are human rights problems that need to be addressed through a human rights framework. The right to adequate housing, in its full scope, and the right to non-discrimination in this context, must be at the centre of a new urban agenda.

9. A rights-based approach to Habitat III understands urbanization not simply as a geographical, demographic or economic phenomenon subject to measurement and analysis, but also as a dynamic process that renews and reshapes social, political and economic relationships. A rights-based approach can engage urbanization as a process in which ongoing struggles for and commitments to human rights can and must play a central role in both setting the agenda for action and ensuring that it is realized over time. It ensures that all residents of cities have equal voice, that their contributions to urban life are recognized and that their right to adequate housing, including infrastructure, services, transportation and other related human rights are fully considered.

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[4] The thematic report of the Special Rapporteur to the Human Rights Council at its thirty-first session, in March 2016, will focus on homelessness and the right to adequate housing.

[5] See European Federation of National Organisations Working with the Homeless, "Impact of anti-crisis austerity measures on homeless services across the EU", policy paper, 2011; see also A/HRC/27/72, case No. GBR 1/2014, and response from the Government of the United Kingdom of Great Britain and Northern Ireland dated 10 July 2014, available from www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

10. The present report will consider how a renewed commitment to the right to adequate housing in the context of urbanization can meet the objectives of the new urban agenda by reshaping power dynamics and decision-making, transforming social and political relationships, reducing inequality and promoting social inclusion, addressing the needs of vulnerable groups, creating more accountable and effective governance and allocation of fiscal resources and creating dynamic and sustainable urban economies.

II. The human rights way to the new urban agenda

A. From human rights commitments to implementation: Habitat II to Habitat III

11. Achieving the objectives of Habitat III will rely on the unique ability of human rights to effect transformative change through the application of universal norms and guiding principles to specific contexts and in response to emerging challenges. This essentially describes the key features and benefits of a human rights approach. Human rights can effect the kind of spatial, geographic, social and attitudinal change required to address the structural causes of exclusion and inequality, so that cities become places of opportunity and well-being for everyone — where adequate housing, food, water and sanitation, education, employment and health are realized as fundamental rights.

12. The right to adequate housing and other related rights must sit at the centre of an agenda for cities. Housing is a cornerstone right, indivisible from all other rights and fundamental to an approach that begins with the dignity, equality and security of the human person. Narrow interpretations that focus on housing as a commodity or housing that provides a roof over one's head have been rejected under international human rights law. Rather, the right to housing has long been understood as the right to live somewhere in peace, security and dignity.[6] The right to adequate housing and to non-discrimination are themselves transformational, creating not only goals for which to strive but also a framework of action and accountability through which the goals can be realized.

13. Twenty years ago, the Habitat Agenda adopted by the second United Nations Conference on Human Settlements (Habitat II) clearly articulated a commitment to "the full and progressive realization of the right to adequate housing, as provided for in international instruments".[7] The implementation of the Habitat Agenda, however, has not fully embraced human rights. Escalating homelessness in many regions, the continuation of forced evictions with impunity around the globe and the growth of informal settlements without adequate services suggest that the right to adequate housing has not been prioritized in the way that would have been required for effective implementation.

14. Housing is a major component of any city. However, it seems to have largely fallen off the public policy agenda. At the international level, for example, the right

[6] Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 7.

[7] *Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, 3-14 June 1996* (A/CONF.165/14), chap. I, resolution 1, annex II, para. 39.

to adequate housing has not been a focus of development goals. Also, the lending priorities within the World Bank have shifted dramatically away from low-income housing, even as the problems of inadequate housing and homelessness have become more widespread and severe. In the mid-1970s to the mid-1980s more than 90 per cent of total shelter lending was allocated to low-income housing, compared to about 10 per cent since the mid-1990s.[8] Moreover, a much smaller share has gone to low-income countries (20 per cent, down from about 40 per cent from the mid-1970s to the mid-1980s).[9] In short, there is little evidence of the commitment to the realization of the right to adequate housing that was articulated in the Habitat Agenda. What went wrong and how can we ensure that a similar commitment made in 2016 is more successfully implemented?

15. In discussions with government authorities, civil society and other actors, the Special Rapporteur has identified the relationship between subnational governments and international human rights norms, procedures and commitments as one factor that has contributed to the failure to realize the right to adequate housing as affirmed at Habitat II. Over the last 20 years, subnational or local governments have been accorded greater responsibility for the implementation of the housing-related provisions of the Habitat Agenda. However, international human rights mechanisms and procedures have engaged primarily with national Governments rather than directly addressing the circumstances of local governments.[10] So, while local governments hold key responsibilities for housing and related programmes and are equally bound by their States' international obligations, they are rarely participants in the international processes through which obligations are clarified and they often lack clarity about their roles. Moreover, the institutional frameworks for monitoring, implementation and accountability with respect to human rights have rarely been put in place at the city level.

16. A second factor is the evolving understanding of the meaning of the right to housing. Twenty years ago, the idea of the right to housing as a "lever of transformational change" was far less sophisticated than today. Up until the 1990s, both internationally and nationally, the fulfilment of the right to adequate housing was generally conceived of as an aspirational goal of Governments. By the end of the millennium, however, the "second generation" status of economic, social and cultural rights had eroded, and the right to housing was understood as having the capacity to empower rights holders to become active participants in decision-making, challenge stigmatization and exclusion and provide access to justice and effective remedies. It was also understood that States can be held accountable for measures taken to progressively realize the right to housing, including through the adoption of housing strategies and appropriate budgetary allocations. Such measures must be assessed for compliance with human rights and engage with international, national, subnational and local initiatives and strategies.

17. These historic developments have fundamentally changed the approach to realizing the right to adequate housing from an aspirational model focused exclusively on commitments by national-level Governments to a more dynamic

[8] Robert M. Buckley and Jerry Kalarickal, eds., *Thirty Years of World Bank Shelter Lending: What Have We Learned?* (Washington, D.C., World Bank, 2006), p. 68.

[9] Ibid.

[10] For a full discussion, see the report of the Special Rapporteur on minority issues to the Human Rights Council (A/HRC/28/64).

understanding of the role rights claimants and social movements must play in combination with all levels of governments and non-governmental actors in the realization of the right to adequate housing. This is reflected in the fact that a growing number of countries have given constitutional recognition to the right to adequate housing, domestic courts have increasingly adjudicated claims to the right to adequate housing, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 63/117, annex) has entered in force, creating an individual complaints procedure. This shift in approach to the right to adequate housing, however, has not yet fully taken root at the local level, where key actors are less aware of international and constitutional norms and where access to justice is often lacking.

18. The challenge of Habitat III is to ground a new urban agenda in an updated and more dynamic understanding of how the right to adequate housing can ground a transformational process of realizing the goals of inclusive sustainable cities in which everyone has access to adequate housing. The new urban agenda is the right space at the right time to embrace and articulate a new human rights framework for cities: an urban rights agenda. And within this human rights framework, the right to adequate housing and associated obligations of all relevant actors must be clearly articulated and firmly rooted.

B. The right to housing: pillar of an urban rights agenda

19. Incorporating the right to housing as a pillar in a new urban agenda will have important ramifications. The right to housing is the right to a home that is secure and connected to services, employment opportunities and urban life. Beyond walls and a roof, it requires individuals and households to have access to water, sanitation, electricity, schools, health care and other services, such as waste management, roads, sewage systems and access to transportation.[11]

20. The right to housing demands a people-centred approach. It takes as its starting point the capacities of those who are homeless or living in inadequate housing to become both central agents and prioritized stakeholders of housing policy and programmes. As such these groups must be meaningfully consulted, have access to relevant information in a timely fashion and be included in planning processes and the design and implementation of policies. The right to housing engenders new social, economic and political relationships through which rights holders may be empowered to define and claim their rights and effect social and political change necessary for their realization.

21. The right to housing includes many components that must be realized progressively. All levels of government have obligations to adopt strategies for the realization of the right to housing, including strong provisions against discrimination and for equality in all policies related to access, availability and affordability of housing and related-services. Such strategies must include measureable goals and targets, and reasonable timelines for reaching those goals, as well as mechanisms for monitoring, assessing and ensuring progress or taking corrective measures when necessary. In this way, human rights obligations engage

[11] Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, paras. 7 and 8.

directly with the challenge of meeting goals and targets adopted in the new urban agenda.

22. The right to housing is beneficial for its clarity as to who bears the duty to ensure rights for whom. While national Governments ratify international human rights treaties, local and subnational governments are also responsible for implementing international human rights obligations (see A/HRC/28/64). An urban rights agenda must clarify responsibilities with respect to the right to housing and ensure effective coordination and accountability among various levels of government, from national to local. Policies and programmes of different ministries must be informed by and consistent with the right to housing and monitored and assessed regularly.

23. An urban rights agenda must also ensure better understanding of the responsibilities and obligations of a broad spectrum of private and other non-governmental actors, including public-private partnerships and large corporations as well as smaller real estate developers, those who provide rental accommodation and providers of services like waste management. The private sector has an increasingly central role in urban development and a direct impact on public policy at the urban level. The private sector must be properly regulated and incentivized to ensure that its actions or omissions do not undermine human rights standards.[12]

24. Fiscal accountability is also a critical and often neglected element of a rights-based approach. The realization of the right to adequate housing requires appropriate use and distribution of resources. Under international human rights law, governments are required to give priority to human rights in budgeting by allocating the "maximum of available resources" and using "all appropriate means" to realize the right to adequate housing and related rights.[13]

25. Access to justice in cities to claim and enforce the right to adequate housing is also critical, not simply to ensure meaningful accountability but also as a means to identify and remedy barriers that need to be addressed in order to maximize efficiency and effectiveness of programmes. Recent studies suggest, for example, that there are often cost savings for governments if the structural causes of homelessness are addressed and remedied rather than continuing to incur greater costs of policing, emergency services, health care and loss of productivity associated with homelessness.[14] In this regard, accessible mechanisms for implementing and adjudicating the right to adequate housing in cities are important, including human rights institutions working at the city level, civil society and non-governmental

[12] See Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex), endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011.

[13] For a substantive discussion, analysis and guidance on the "maximum of available resources" and human rights, including in relation to fiscal policy and the crucial role of social budgeting, see http://internationalbudget.org/publications/escrarticle2/; http://internationalbudget.org/2014/08/budgeting-for-human-rights-using-the-maximum-of-available-resources/; http://internationalbudget.org/2014/09/budgeting-for-human-rights-progressive-realization/; and www.cwgl.rutgers.edu/docman/economic-and-social-rights-publications/362-maximumavailableresources-pdf/file.

[14] See, for example, Stephen Gaetz, "The real cost of homelessness: Can we save money by doing the right thing?", Homeless Hub paper No. 3 (Toronto, Canadian Homelessness Research Network Press, 2012).

organizations that advocate for rights, ombudspersons, mediation officers, administrative tribunals and courts.

26. Just as cities can become the nests for new and innovative advances in architecture, culture, education and economic growth, they can also become generators of new, vibrant and inclusive exchanges of ideas and information about realizing rights. While the pluralism and diversity found in many cities can be a source of significant conflict and lead to exclusion and violations of human rights, they can also nourish a human rights-friendly culture. Recent years have witnessed the emergence of new and dynamic human rights movements in cities. It is essential to engage with social movements and urban communities, as they can drive and nurture commitments to the right to adequate housing. As a result of some of these struggles, cities have adopted charters, ordinances and other legal mechanisms which affirm social inclusion and the right to adequate housing.[15] Habitat III is an opportunity to harness these rights-oriented urban social movements and create stronger collaborations between them, with the shared goal of the realization of the right to adequate housing.

C. Housing and the global development goals

1. Looking back: the Millennium Development Goals

27. In order to understand where we are on the road to Habitat III, it is instructive to look back as well as to look ahead. The Millennium Development Goals were adopted just four years after Habitat II and influenced dominant approaches to human development, which in turn affected the implementation of Habitat II.

28. The Millennium Development Goals established an international agreement around seven goals linked to ending poverty, each with specific targets and indicators. In doing so, they created an international consensus regarding the select issues that were included in the agenda. While lacking references to human rights, the Millennium Development Goals affirmed certain goals that resonated with human rights to an adequate standard of living, food, work, water and sanitation, aiming to eradicate poverty and hunger, achieve full and productive employment and decent work for all and halve the number of people denied access to safe drinking water and basic sanitation by 2015.

29. Housing, however, was a clear outlier in the seven Millennium Development Goals. Housing or homelessness were nowhere specifically mentioned. The only housing-related target (Target 7.D: "By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers") was placed under the goal of environmental sustainability in Goal 7. The target suffered from vagueness and damaging interpretations. It allowed national assessment reports to reference almost any improvement, even if only marginal; and a focus on data regarding the proportion of the urban population living in slums as a key indicator encouraged forced evictions that were in fact contrary to human rights law. The target of 100 million was a drop in the bucket compared to the more than one billion

[15] There are a number of human rights city charters around the world. The *Global Charter-Agenda for Human Rights in the City* published by the United Cities and Local Governments (UCLG) Committee on Social Inclusion, Participatory Democracy and Human Rights (available from http://www.uclg-cisdp.org/) has a specific section on the right to housing and domicile (section X).

people living in inadequate or slum-like conditions and it was detached from key human rights concerns, such as ensuring access to adequate housing, including security of tenure for all.[16]

30. Upon their adoption, the Millennium Development Goals appeared to sweep over processes already under way to implement the Habitat Agenda (see para. 13 above). The vague and inadequate target regarding slum dwellers appears to have been conflated with a commitment to the progressive realization of the right to adequate housing as articulated in the Habitat Agenda. Although originally intended as an international reference tool to highlight some issues, the Millennium Development Goals evolved into a blueprint for progress and prioritization at the national level, shaping financing for development agendas. They were widely used in national policymaking and in budget discussions, relegating issues not included in the Millennium Development Goals to the status of secondary priorities, with resources and political will divested accordingly. Statistical targets became confused with the realization of rights. As a result, it was not a surprise that the target of improving the lives of a tiny proportion of those living in slum-like conditions was soon reached when, in reality, substandard housing conditions and homelessness continued to increase around the world.

31. The Millennium Development Goals had a direct and detrimental impact on the development of a rights-based pro-housing urban agenda. Essential aspects of the right to housing in urban centres were rendered invisible, in particular, security of tenure, homelessness, adequate location and affordability of housing and related services — none of which were referenced in the Goals. The focus on housing structures and bathrooms in target 7.D diverted attention from the critical economic, social, governance and environmental challenges of urbanization identified by Habitat II.[17] Moreover, the Millennium Development Goals lacked accountability mechanisms, with no reference to meaningful engagement with rights holders, access to justice or the realization of the right to adequate housing as would have been the case had human rights been used to unite the Goal under a common framework for their implementation.

2. Looking forward: the sustainable development goals

32. The Special Rapporteur is mindful that the present report is prepared on the eve of the adoption of the post-2015 development agenda.[18] The content of the sustainable development goals appears to have taken on board some of the lessons learned from the experience of the Millennium Development Goals. As it stands, the final draft of the outcome document[19] articulates a renewed commitment to fostering inclusive societies, combating inequality, ensuring equal access to justice and

[16] For a discussion on security of tenure as a component of the right to adequate housing, see A/HRC/22/46 and the guiding principles on security of tenure for the urban poor (A/HRC/25/54, sect. II).

[17] Sakiko Fukuda-Parr, Alicia Ely Yamin and Joshua Greenstein, "Synthesis Paper: The power of numbers: a critical review of MDG targets for human development and human rights", Working Paper Series, May 2013, p. 19. Available from www.worldbank.org/content/dam/Worldbank/document/Gender/Synthesis%20paper%20PoN_Final.pdf.

[18] By its resolution 69/244, the General Assembly decided that the United Nations summit for the adoption of the post-2015 development agenda would be held from 25 to 27 September 2015, in New York.

[19] See A/69/L.85, annex.

respect for all human rights. In particular, the document refers to the right to development, the right of self-determination, women's equal rights to economic resources, reproductive and labour rights and the right to an adequate standard of living, including food and water. Nowhere, however, does the document refer to the right to adequate housing.

33. Goal 11 commits States to "make cities and human settlements inclusive, safe, resilient and sustainable". Among the specific targets, target 11.1 says: "By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums". Although the absence of any reference to the right to adequate housing is troubling, the specific reference to access to adequate housing for all is important, as it at least provides a link to a more coherent framework connected to existing human rights obligations. It is not entirely clear, however, how the standard of "adequate, safe and affordable housing" relates to international human rights norms with respect to the right to housing, such as safety, affordability, cultural adequacy and accessibility, among others. Moreover, the reference to upgrading slums, without specifying criteria or referring to the rights of those who currently live there, could be subject to the same kinds of ad hoc interpretations as were applied to target 7.D of the Millennium Development Goals, failing to address the actual needs of residents of informal settlements or to recognize all aspects of their right to housing. Lack of security of tenure, forced evictions and homelessness — three housing issues that define the experiences of hundreds of millions of people worldwide — have been central concerns of human rights bodies in relation to the realization of the right to housing, yet these issues are not referenced at all in goal 11. And the idea of adopting measures to halt the expansion of informal settlements with their deplorable conditions finds no place.

34. In the Special Rapporteur's view, there is a real risk that the implementation framework for the sustainable development goals will remain exclusively focused on statistical measurement and assessment without the meaningful accountability, participation, legislative action or access to justice that is required for the realization of all human rights. International human rights standards regarding development-based displacement, allocation of maximum of available resources, the adoption of national and urban housing and homelessness strategies and the obligation to take immediate steps to address discrimination and inequality — all of which are key to the enjoyment of the right to housing — have thus far not received much attention in discussions. In general, the continued neglect of the right to adequate housing in the sustainable development goals creates well-founded concern that commitments made to the right to adequate housing at Habitat III might very well be sidelined.

35. This cannot be allowed to occur. Habitat III must be approached as the critical opportunity to elaborate, concretize and give meaning to target 11.1 of the proposed sustainable development goals while also safeguarding its vital link to binding international human rights obligations. Habitat III must endeavour to narrow the gap between rhetorical commitments and their effective implementation. Habitat III is where States and local governments can insist that the right to adequate housing not be relegated to the margins, and rather that it be reaffirmed as a core commitment, placed at the centre of a new urban rights agenda and implemented as a prerequisite for sustainable, prosperous cities for all.

III. An urban rights agenda: five key areas

36. There is a considerable range of interrelated issues to be addressed at Habitat III, with 22 issue papers under discussion in six policy areas.[20] A human rights framework with the right to housing at its core can help prioritize competing issues, it can provide a coherent, unifying framework, and it can engage multiple stakeholders in an ongoing transformational process towards the realization of the goal of adequate housing for all.

37. In the Special Rapporteur's view, there are five critical cross-cutting areas upon which an urban rights agenda — with the right to housing as a pillar — should focus: (a) social exclusion: stigmatization and housing status; (b) migration; (c) vulnerable groups; (d) land and inequality; and (e) informal settlements.

A. Social exclusion: stigmatization and housing status

38. Urbanization has created new patterns of discrimination and inequality based on spatial and socioeconomic marginalization. Exclusionary patterns of governance and citizenship have given disproportionate power and influence to property owners and investors while depriving those without land or property of a meaningful say in decisions that will have significant impact on their lives and on their ability to obtain housing. Refugees, migrants, persons with disabilities, children and youth, indigenous peoples, women and minorities are most likely to find themselves homeless or relegated to the most marginal and unsafe places in cities, treated as non-citizens or outsiders.

39. Housing status, such as being homeless or a "squatter" or a resident of an informal settlement, has become more than a marker of deprivation in cities. It has become a social identity that is often the basis for stigmatization and discrimination, limiting opportunities and creating further obstacles to inclusion and equality.

40. In some cases, survival strategies of those who are homeless or have no access to land have been criminalized (see A/66/265). Public space has become contested space: rather than being designed to meet the needs of those who are homeless as well as others, public spaces have been designed to drive out the homeless. In many developed countries it has become common to enact legislation prohibiting, and sometimes criminalizing, activities such as "loitering", "panhandling", outdoor charity food services and sleeping in public spaces.[21] Park benches are even designed to prevent homeless people from lying down. Marginalized groups — particularly street children and those who are homeless — are "cleared" from urban

[20] All Habitat III issue papers are available from http://unhabitat.org/issue-papers-and-policy-units/.

[21] See, for example, Griselda Palleres, "Derecho a la ciudad: personas sin hogar en la ciudad de Buenos Aires", in *Dimensiones del Hábitat Popular Latinoamericano*, Teolinda Bolívar and Jaime Erazo, eds., Hacedores de ciudades, vol. 2 (Quito, Facultad Latinoamericana de Ciencias Sociales and Latin American Social Sciences Council, 2012), pp. 176-179; Comisión de Derechos Humanos del Distrito Federal, *Situación de los Derechos Humanos de las Poblaciones Callejeras en el Distrito Federal 2012-2013*, informe especial (Distrito Federal, México, Comisión de Derechos Humanos del Distrito Federal and others, 2014), chap. III; National Law Center on Homelessness and Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* (Washington, D.C., 2014); and Guillem Fernàndez Evangelista and Samara Jones, eds., *Mean Streets: A Report on the Criminalisation of Homelessness in Europe* (Brussels, European Federation of National Organisations Working with the Homeless and Others, 2013).

areas in order to attract new businesses, tourists and investors or to host mega-events (see A/HRC/13/20). In these ways, many of those who have come to cities as a result of displacement or discrimination find themselves revictimized by further displacement and discrimination.

41. Although some of the structural causes of inequality in cities and some of the grounds and experiences of discrimination are new, an international human rights framework can be responsive. The Committee on Economic, Social and Cultural Rights has now recognized discrimination based on social or economic situation, including homelessness or other housing status, as a prohibited ground of discrimination.[22] The Human Rights Committee and other treaty bodies have begun to engage directly with these issues.[23] The guiding principles on extreme poverty and human rights specifically reference the need for States to repeal or reform laws that "criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities".[24]

42. A rights-based approach to contested public space does not resolve every dispute in favour of those who are required to use public space as their home for lack of any alternative. It does, however, reject the stigmatization and criminalization of homeless people frequently invoked to reserve public space for the more advantaged. Those who are forced to use public space as their homes must be treated with respect and dignity and afforded protection from arbitrary or unreasonable eviction. The solution to homelessness is not further displacement or discriminatory treatment, but rather ensuring access to viable, long-term housing as a matter of choice.

B. Migration and displacement

43. Urbanization is directly linked to migration and displacement, and housing for migrants and internally displaced persons is currently one of the most serious challenges for cities. There are over 1 billion persons considered migrants worldwide, of whom approximately one quarter have migrated to another country,[25] with the majority locating to cities. According to recent estimates, since 2008, about 26.4 million people have been displaced by disasters alone each year.[26]

44. Migrants and internally displaced persons are often treated as outsiders, left out of local decision-making processes and frequently subjected to discriminatory or xenophobic attitudes. Residency status and citizenship are often used as eligibility

[22] Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights (E/C.12/GC/20), para. 35.

[23] See, for example, CERD/C/USA/CO/6, CCPR/C/BIH/CO/2 (in relation to Roma and housing) and E/C.12/KAZ/CO/1.

[24] The guiding principles (A/HRC/21/39) were adopted by the Human Rights Council in resolution 21/11 of 27 September 2012. Available from www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf.

[25] Estimates point to around 232 million international migrants around the world (see *Trends in International Migrant Stock: The 2013 Revision* (United Nations database, POP/DB/MIG/Stock/Rev.2013), table 1. Available from http://esa.un.org/unmigration/TIMSA2013/Data/subsheets/UN_MigrantStock_2013T3.xls.

[26] Norwegian Refugee Council, International Displacement Monitoring Centre, *Global Estimates 2015: People Displaced by Disasters* (Geneva, 2015). Available from www.internal-displacement.org.

criteria for subsidized housing programmes, forcing many migrants to rely on unregulated private housing in overcrowded, inadequate and informal settings, often resulting in homelessness.

45. Many who are displaced or migrate to cities are dislocated from their cultural, economic and family lives. Those coming from rural areas find themselves landless and lacking any sense of identity in the urban context. Indigenous peoples who have been displaced from their ancestral lands and traditional practices are particularly vulnerable to homelessness, discrimination and social exclusion when they move to cities.

46. While the structural causes of migration and displacement must be addressed by all levels of government and by the international community, the need of new arrivals for housing and related services, as well as their related need to retain their cultural practices, identity and sense of community, must be met in cities. Local governments are increasingly responsible for addressing housing needs linked to migration and displacement to cities, yet they often lack the necessary resources and capacity to provide adequate housing and services. Moreover, local governments may themselves respond in a discriminatory and punitive fashion to migrants or the internally displaced. It has become alarmingly common for foreign migrants, especially those who are undocumented, to be deprived of social protection, including emergency shelters, in cities — sometimes at the insistence of national-level Governments that provide funding for housing and social protection programmes. Such discrimination and the resulting homelessness among migrants impose further costs on cities. Ensuring that migrants have a secure place to live, can access rental accommodation and can choose to live in the most appropriate and affordable neighbourhoods is essential to combatting their exclusion and imbuing in them a sense of belonging in the city.[27]

47. Xenophobia and discrimination against those who are considered "outsiders" has long been a central concern of human rights and it is important that these issues also be recognized and addressed as human rights issues in cities. Human rights norms and legal protections can play an important role in clarifying governments' obligations to develop programmes and responses to the distinctive needs of migrants as well as of vulnerable people affected by natural disasters and internal conflict (see, for example, A/65/261 and A/HRC/14/30).

48. At the national level, relevant jurisprudence has also emerged. In case T-025 in Colombia, for example, the Constitutional Court required the implementation of effective programmes to respond to the unconstitutional state of affairs confronting internally displaced persons, where 63.5 per cent of the displaced population had inadequate housing and 49 per cent lacked access to appropriate public utilities.[28] In *Bhim Prakash Oli et Al.* v. *Government of Nepal et al*, a case involving internally displaced persons, relying on international human rights law, the Supreme Court of Nepal held that the State was required to implement and monitor

[27] See A/HRC/29/50, case No. NLD 1/2014, and response from the Government of the Netherlands dated 4 February 2015, available from www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

[28] Constitutional Court of Colombia, decision T-025/04. Available from http://www.corteconstitucional.gov.co/T-025-04/Autos.php.

non-discriminatory, holistic plans and programmes to integrate displaced populations into existing housing priorities.[29]

C. Persons and groups in vulnerable situations

49. In some situations, children and youth, including lesbian, gay, bisexual, transgender and intersex youth, and women can be vulnerable to violence, requiring access to safe housing and basic services if they are to thrive in the urban context. These groups are often forced into homelessness by sexual and other violence, socioeconomic deprivation, and religious and cultural intolerance within their homes or communities. A sound housing structure does not guarantee safety within housing for these vulnerable groups. When women, children and youth leave their homes, they require both short- and long-term support to secure adequate housing, as they often lack the means to secure housing themselves. In this regard, diverse, culturally appropriate options must be made available.

50. To attend to the needs of diverse groups and ensure accountability, it is important that housing safety issues be addressed within a human rights framework. At a minimum, according to international human rights obligations, cities must ensure that there are safe places for people to reside when their homes become dangerous.[30] Basic services like sanitation and water must be available in a manner that poses no risk to safety (see A/HRC/21/42, paras. 39 and 40) and housing design must be responsive to the needs of particular vulnerable groups, as articulated by those groups.

51. Urban environments have served as a barrier to the inclusion and participation of persons with disabilities. Persons with disabilities face widespread lack of accessibility to built environments, including housing, public buildings and spaces, and to basic urban services such as sanitation and water, health, education and transportation. Cultural attitudes including negative stereotyping and stigma also contribute to the exclusion and marginalization of persons with disabilities in urban environments. In its articles 8 and 9, the Convention on the Rights of Persons with Disabilities[31] emphasizes the importance of mainstreaming disability issues in all strategies of sustainable development and obliges States to ensure that housing is adequate, accessible and barrier free for person with disabilities.

52. Under international human rights law, policies and programmes must be designed in ways that take into account the experiences and realities of marginalized groups so that their disadvantage is addressed in real terms. This is because equality is understood "substantively" and not just "formally". Even where laws and policies appear to be "fair" by treating everyone the same, the experience or effect of laws and policies can be discriminatory owing, for example, to a person's socioeconomic status, housing status or gender. States and subnational governments are obliged to address the needs of those in the most desperate housing situations as a matter of

[29] See Maritza Formisano Prada, *Empowering the Poor through Human Rights Litigation* (Paris, United Nations Educational, Scientific and Cultural Organization, 2011), p. 75.

[30] See, for example, *A.T. v. Hungary*, Communication No. 2/2003 (CEDAW/C/32/D/2/2003), available from https://opcedaw.wordpress.com/communications/all-communications/. See also E/CN.4/2006/118.

[31] United Nations, *Treaty Series*, vol. 2515, No. 44910.

priority and urgency.[32] Positive measures must be taken to reduce stigmatization and address the needs of homeless women and men, residents of informal settlements, low-income households and other groups lacking access to adequate housing.

D. Land and inequality

53. While cities are, for some, places of opportunity and the engines of economic development, for many others they are sites of poverty, inequality and exclusion.[33] The drive for economic growth, to create "world-class cities" and to attract international and domestic investment, has too often occurred at the expense of social inclusion and protection.[34] Increased economic opportunities in cities should provide a lever for greater inclusion and socioeconomic equality, yet urban economies have generally tended to deepen inequality. This tension, between cities as economic drivers and cities as generators of inequality, plays out distinctly with respect to land.

54. Those who are affluent and own land, homes or other property in cities have dramatically increased their wealth because of speculation and inflation of values. Those who cannot afford ownership face increasing housing costs and are driven to the outskirts of cities or to informal settlements, dislocated from their sources of livelihood and lacking security of tenure. Inequality in access to land and property, affecting marginalized groups including women, migrants and all those living in poverty, has become embedded in housing inequality and spatial segregation, dividing cities between those who own land and property and have access to basic services and infrastructure and those who do not.

55. Other urban patterns linked to land and property have increased inequality and social exclusion; these include privatization of social housing, public land and infrastructure; predatory lending practices; increased use of urban land and housing as investment assets within a globalized financial market; heightened control of urban land by wealthy individuals and corporate interests; environmental degradation of land and water in areas occupied by marginalized groups; unregulated real estate markets; conversion of land used for housing to commercial uses; land grabbing; and the disproportionate influence of private interests in land use planning.

56. In response to these systemic patterns of inequality and social exclusion with respect to land, human rights movements have emerged in cities with proposals for a reorientation of land and property rights that prioritizes the social function of land[35] and its central role in the realization of the right to adequate housing. Ensuring more equitable access to land and property and the prevention of land grabbing is central to many struggles for housing rights in cities. The human rights agenda of Habitat III must be informed by these creative approaches to urban land and

[32] Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all human rights (E/C.12/2005/4), para. 16.

[33] See for example United Nations Human Settlements Programme (UN-Habitat), *State of the World's Cities 2012/2013: Prosperity of Cities* (Nairobi, 2012).

[34] Ibid.

[35] This concept with deep historical roots suggests that land ownership and the benefits that derive from it are not without limitations, but rather must be used for the benefit of others. See a discussion of the social function of property in A/HRC/25/54, paras. 41-49.

property. Unless the primacy of human rights over market forces and private profit is entrenched, a new urban agenda that reduces inequalities and is based on inclusion and sustainability will be unachievable.

E. Informal settlements

57. In much of the world, urbanization has become synonymous with the emergence and expansion of informal settlements. Around one quarter of the world's urban population, or approximately 828 million people, live in informal settlements.[36] What this means in real terms, in human terms, is the denial of almost every human right and a constant assault on human dignity. Life in an informal settlement at its worst can entail lack of clean, running water, sanitation services and electricity, open defecation, overcrowding, houses overrun by rodents, lack of garbage disposal, living in structurally unstable homes easily destroyed by extreme weather, living in the most undesirable and sometimes dangerous areas and living under constant threat of forced eviction. And if the actual housing conditions are not bad enough, informal settlements often lack nearby services such as health-care facilities and schools, and often offer no employment opportunities or places for children to play. Young people are left to languish and informal settlements can easily become breeding grounds for conflict and violence.

58. Informal settlements, however, are not just the sum total of deprivations, but are also often the result of concerted decisions that have displaced people, denied them services and refused them recognition and security of tenure. This suggests that "upgrading slums" will not result in the systemic change necessary to slacken the pace of the development of informal settlements. The causes will have to be addressed alongside the symptoms, otherwise it will be a zero-sum game: for every slum that is upgraded, another will be created.

59. When visiting residents of informal settlements, one is invariably struck by the human capacity to create vibrant communities with dignity and beauty despite the gross lack of almost everything. This capacity can be better harnessed; residents of informal settlements usually can identify the structural causes of their conditions, and they know well their needs and the barriers to meeting their needs. Frequently, they have a vision for their future and the future of their communities and can develop effective and targeted solutions. Engaging residents to participate in realizing their right to adequate housing is consistent with a human rights framework. For this to happen, local and national governments must be willing to recognize these communities as legitimate participants in urban democracy and as drivers of their own well-being.

IV. A new rights-based framework for urban law, policy and governance

60. The fact that approximately one in four urban residents lives in informal settlements or is homeless, and that many more are living in inadequate housing, is evidence of a critical systemic failure of the international community, national and

[36] UN-Habitat, *State of the World's Cities 2010/2011: Bridging the Urban Divide* (Nairobi, 2010), p. 33.

local governments and other actors to coordinate and design relevant legislation, programmes and policies in a manner that is consistent with the right to adequate housing. Implementing an urban rights agenda where the right to housing is enjoyed by all, including the most vulnerable and marginalized populations, will require significant reassessment and redesign of urban law and policy.

61. Access to adequate housing in the urban context is linked to a wide array of laws and programmes that go beyond traditional notions of housing policy. As the Committee on Economic, Social and Cultural Rights has noted, it requires "coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.)."[37] Trade and investment agreements, constitutional provisions, conditions attached to funding agreements, land use restrictions and municipal by-laws, for example, all may affect the capacity of cities to ensure access to housing.

62. Programmatic measures to enhance access to affordable housing are also wide-ranging and interrelated, and may include a variety of approaches, including direct grants and subsidies for housing to poor households, rent regulation, mixed housing tenures, quotas for real estate developers to include housing for low- and middle-income households, housing loans with lower interest rates or softer conditions, neighbourhood upgrading and revitalization projects and community support for people with mental health disabilities.[38] Housing programmes along with other related programmes, laws and agreements interact to form a holistic, multilayered framework.

63. A central question at Habitat III will be how to bring coherence and strategic transformation to interactive systems of law and policy so that the new urban agenda genuinely promotes sustainable urban development and access to adequate housing for all. A human rights approach focused on the right to adequate housing is critical to meeting this challenge, because it provides an overarching framework and vision that binds an array of laws and policies within a common purpose and shared set of values.

64. Inadequate housing, homelessness and the informal settlements in cities must be addressed not only as a failure of housing and upgrading programmes but primarily as a failure of existing laws to ensure human rights. Residents of informal settlements lack both housing structures and basic legal protections, such as security of tenure, health and safety protections and entitlements to services. They are deprived not only of housing but of the protections afforded by the rule of law, which in turn makes them vulnerable to further deprivations.

65. Obligations of States to maintain the rule of law are too often considered primarily in relation to legal protections of existing title to property or contractual economic relationships. Under the rule of law, however, fundamental human rights

[37] Committee on Economic, Social and Cultural Rights, general comment no. 4 (1991) on the right to adequate housing, para. 12.

[38] Examples of such policies can be found in the responses received from Albania, Cyprus, Colombia, Germany, Singapore and Trinidad and Tobago to the questionnaire posted by the Special Rapporteur for the preparation of the present report. See also the responses from national human rights institutions in Paraguay (Defensoría del Pueblo) and Portugal (Provedor de Justiça). All responses are available from www.ohchr.org/EN/Issues/Housing/Pages/HabitatIIIandtheNewUrbanAgenda.aspx. The Special Rapporteur is grateful for all the contributions to this report.

must be guaranteed, including the right to adequate housing. An urban rights agenda will require a more inclusive approach to the rule of law in cities than has been applied in the past, focused on the need to effectively address the circumstances of those who have had no access to legal title to land, housing or property. The right to housing must be fully incorporated within urban law as a right not only to physical and environmental aspects of housing but also to the equal protection of the law, with full protection of security of tenure, health and safety and entitlement to basic services, livelihood and cultural life. Laws and policies must be subject to ongoing review so as to adjust to emerging patterns of exclusion or to address previously unrecognized circumstances.

66. Human rights must be accorded a status of paramountcy within urban law so as to guide the design, interpretation and application of all other laws, policies and programmes. Paramountcy of human rights means that decision makers are legally required to consider and apply the right to housing in their areas of responsibility. Planners must recognize in situ rights of those living in informal settlements. A tribunal or court reviewing intended evictions needs to consider all possible alternatives and, if evictions are unavoidable, ensure that those being displaced have been fully consulted and engaged and provided with adequate and appropriate alternative housing. Zoning laws, property rights or urban development plans must be developed in consultation with and with the participation of those who will be directly affected and assessed in terms of their effect on marginalized or vulnerable groups. Any officials engaged in administering laws or policies linked to the right to housing should be provided with training in the meaning and application of the right to housing in their areas of responsibility.

67. Incorporating the right to adequate housing and related rights as vital components of urban law also requires institutional support. City governments, city-based human rights committees, ombudspersons, human rights charters and legislative housing strategies with monitoring and accountability mechanisms can play an important role in promoting rights-conscious decision-making, ensuring access to justice and ensuring that human rights are not ignored in decision-making.

68. Urban finance is a critical area of law and policy that has too often been neglected in human rights review and accountability. Rights can quickly become illusory if fiscal policy is not aligned with them. Rights-based urban governance and finance require a reorientation of democratic accountability to include fiscal policy. The focus needs to shift from the interests of those who traditionally determine economic priorities — investors, developers and businesses — toward the interests of those in need of adequate housing and basic services.

69. National Governments must ensure that when city governments are allocated the responsibility for housing and related programmes, they have access to the resources necessary to fulfil their human rights obligations. Maladministration and corruption within program planning, implementation and regulation should also be seen and addressed as a human rights issue, as a violation of governments' obligations to apply the maximum of available resources to the realization of the right to adequate housing.

70. The Special Rapporteur believes that it is also important to consider various redistributive and cost-recovery mechanisms in cities from a human rights standpoint. Expenditure on public space, infrastructure, recreational facilities and

cultural and artistic activities[39] too often benefits more advantaged households to the detriment of the needs of the vast majorities. Pricing of rental housing, water, sanitation and electricity should ensure affordability for low-income households rather than direct cost recovery. Private providers of housing and infrastructure must be regulated in a manner that accords with the fact that, while housing and infrastructure are often treated as commodities, they are fundamental human rights, requiring significant adjustments to prevailing business models. Adjusted pricing of services for low-income households, for example, has been proven to be an efficient business model which at the same time facilitates access to housing, water, sanitation and electricity that might otherwise be denied.[40] Human rights-based tax audits have also been effective in ensuring that revenue collection at the city level is aligned with obligations to apply the maximum of available resources to realize the right to housing.[41]

71. In all of these areas, recognizing the paramountcy of the right to adequate housing brings coherence to wide-ranging urban law and policy and provides a common framework of values to guide decision makers at all levels of government, and in a myriad of different areas and programmes, toward a common purpose and a new urban rights agenda.

V. Conclusions and recommendations

72. **On its current path, urbanization is simply unsustainable. The majority of people in cities worldwide suffer gross inequality, many living in deplorable or unaffordable housing conditions, vulnerable to forced evictions and homelessness and constantly fearing for their safety and security. Millions continue to move to cities in search of opportunities, services and a better life. At the same time, a select few continue to accrue astonishing levels of wealth and power, including from land and housing speculation. Change is required. Habitat III represents an essential opportunity to forge a new way forward, one with the right to adequate housing at its core.**

73. **Human rights can be transformational. The present report has outlined their tremendous capacity in the urban context. With the right to adequate housing as a pillar, a human rights framework can provide the coherence and consistency sorely needed to achieve sustainable, inclusive cities for all. Housing is a major component of any city and central in the lives of those who are marginalized or face situations of vulnerability, and States and local governments have core obligations to uphold the right to adequate housing. Housing cannot be sidelined.**

74. **Embracing the right to adequate housing as a framework for a new urban agenda will require innovative and creative ideas and approaches. It challenges**

[39] For a discussion on artistic freedom and public space, see A/HRC/23/24, paras. 65-68.

[40] Roger D. Colton, "Prepayment utility meters, affordable home energy, and the low income utility consumer", in *Journal of Affordable Housing and Community Development Law*, vol. 10, No. 3 (Spring 2001).

[41] See Center for Economic and Social Rights, "Advancing tax justice through human rights". Available from www.cesr.org/article.php?id=1694 (accessed 26 August 2015). See also the forthcoming publication, *Advancing Tax Justice through Human Rights: Opportunities and Strategies*.

how we govern, what issues and interests are prioritized, the allocation of resources and the nature of the laws, policies and programmes developed. It establishes who is accountable to whom, facilitates the participation of those who are marginalized in decisions that fundamentally affect their lives, and lays out the steps required for implementation. This is the road less travelled, but an urban rights agenda is the way forward.

75. **In this context, the Special Rapporteur recommends that a new urban agenda be based in human rights, with the right to adequate housing as a pillar. An urban rights agenda with consistent reference to human rights law, standards and obligations will provide coherence and a common purpose to the array of issues to be addressed at Habitat III.**

76. **The Special Rapporteur recommends that the urban rights agenda should:**

(a) **Elaborate, concretize and give meaning to target 11.1 of the proposed sustainable development goals regarding access to adequate housing for all, while also safeguarding its vital link to binding international human rights obligations;**

(b) **Clearly articulate the respective and shared responsibilities of national and local governments to ensure the realization of the right to adequate housing in accordance with international human rights law;**

(c) **Clarify the responsibilities of States in relation to international cooperation and assistance and extraterritorial activities affecting the right to adequate housing in cities. In this regard, the responsibilities of international financial institutions, development agencies and international organizations should also be clarified;**

(d) **Commit to enhanced regulation of private actors and markets consistent with the recognition of housing as a human right. In particular, measures should be adopted to prevent forced eviction, land grabbing, speculation and leaving homes or lands (that could otherwise be used) abandoned. Housing markets and financial institutions should be regulated to prevent unnecessary volatility, predatory lending and mortgage crises, such as those experienced in recent years;**

(e) **Reflect the experiences of city residents and establish a process of ongoing participation and engagement, particularly with those who currently lack access to adequate housing. Access to justice should be ensured for all aspects of the right to adequate housing. Human rights institutions, ombudspersons and other human rights bodies should be actively engaged in promoting and protecting the right to housing at the city level;**

(f) **Focus on eliminating social exclusion, inequality and discrimination as human rights violations and prevent the criminalization and stigmatization of people on the basis of their housing status. Particular housing experiences and needs of all migrants, displaced persons, persons with disabilities and women, children and youth in situations of vulnerability should be addressed;**

(g) **Ensure incorporation of the right to adequate housing and other human rights as paramount elements of all urban law, policy and programmes, including fiscal policy, resource allocation and land management;**

(h) **Firmly commit to the elimination of homelessness and forced evictions, as two of the most serious systemic violations of the right to adequate housing in cities;**

(i) **Commit to security of tenure for all households, including all residents of informal settlements. The guiding principles on security of tenure for the urban poor (A/HRC/25/54, sect. II) should be directly incorporated, particularly with respect to strengthening diverse tenure forms, prioritizing in situ solutions, promoting the social function of property, promoting women's security of tenure and ensuring access to justice;**

(j) **The implementation of an urban rights agenda must include the following baseline human rights requirements:**

(i) **A commitment to realize the right to adequate housing with clear goals and timelines for:**

a. **Reducing and ultimately eliminating homelessness;**

b. **Ensuring security of tenure and prevention of all forced evictions;**

c. **Providing the full protection of law for residents of informal settlements;**

d. **Ensuring access to adequate housing for all, including for residents of informal settlements;**

(ii) **The development of housing strategies by all levels of government in consultation with and with the full participation of stakeholders aligned with the urban rights agenda and international human rights law, and supported by human rights institutions;**

(iii) **A clear articulation of the responsibilities of the range of actors required to implement an urban rights agenda, including all levels of government, cross-sectoral departments, civil society, human rights institutions and relevant national and international private actors;**

(iv) **The use of human rights-based indicators to monitor the implementation of the urban rights agenda, measuring both the process of implementation and progressive outcomes. Indicators should focus not only on housing quality but also on access to justice for all aspects of the right to adequate housing, including security of tenure, non-discrimination and positive obligations of governments towards marginalized groups.**

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Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General

Summary

The General Assembly, in its resolution 68/178, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and called upon States countering terrorism to fully comply with their obligations under international law. The present report is submitted pursuant to that resolution. It refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including measures taken in support of the implementation of the United Nations Global Counter-Terrorism Strategy, notably through the activities of the Counter-Terrorism Implementation Task Force, in particular its Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism; the Counter-Terrorism Committee Executive Directorate; the Human Rights Council, its various special procedures and the universal periodic review; the United Nations human rights treaty bodies; and the Office of the United Nations High Commissioner for Human Rights.

* A/70/150.

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I. Introduction

1. In its resolution 68/178 of 18 December 2013, the General Assembly reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and urged States countering terrorism to fully comply with their obligations under international law. It welcomed the work of the United Nations High Commissioner for Human Rights to implement the mandate granted in 2005 by Assembly resolution 60/158, and requested the High Commissioner to continue efforts in that regard; and took note with appreciation of the report of the Secretary-General on protecting human rights and fundamental freedoms while countering terrorism (A/68/298).

2. In the same resolution, the Assembly encouraged the Security Council and its Counter-Terrorism Committee to strengthen the links, cooperation and dialogue with relevant human rights bodies, in particular the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council and relevant treaty bodies, giving due regard to the promotion and protection of human rights and the rule of law in their ongoing work relating to counter-terrorism.

3. In its resolution 68/276 of 13 June 2014, adopted at the conclusion of the fourth biennial review of the United Nations Global Counter-Terrorism Strategy (resolution 60/288, annex), the Assembly emphasized the importance of an integrated and balanced implementation of all four pillars of the Strategy. The Assembly also reasserted the fundamental role of the promotion and protection of human rights, fundamental freedoms and the rule of law, as reflected in pillar IV, in the implementation of all pillars of the Strategy.

4. The present report responds to the request of the General Assembly, in its resolution 68/178, that the Secretary-General submit a report on the implementation of the resolution to the Human Rights Council and to the Assembly at its seventieth session, as well as to the request of the former Commission on Human Rights, in its resolution 2005/80, for the High Commissioner to report to the Assembly on the implementation of that resolution. The report refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including measures taken in support of the implementation of the United Nations Global Counter-Terrorism Strategy. This includes the activities of the Counter-Terrorism Implementation Task Force, in particular its Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism; the Counter-Terrorism Committee Executive Directorate; the Human Rights Council, its various special procedures and the universal periodic review; the United Nations human rights treaty bodies; and OHCHR.

II. Recent United Nations developments in the area of human rights and counter-terrorism

A. United Nations Global Counter-Terrorism Strategy and the Counter-Terrorism Implementation Task Force

5. OHCHR continues to be an active member of the Counter-Terrorism Implementation Task Force and promotes the mainstreaming of human rights across the work of the Task Force, in particular in the working groups of which it is a member. Within the Task Force, OHCHR co-chairs the Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, together with the Rule of Law Unit in the Executive Office of the Secretary-General.[1] The Working Group continues to assist Member States in implementing all human rights aspects of the United Nations Global Counter-Terrorism Strategy, in particular those contained in pillar IV, entitled "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism". An overview of the activities of the Counter-Terrorism Implementation Task Force and its working groups is contained in the report of the Secretary-General on the activities of the United Nations system in implementing the Strategy (A/68/180).

6. As co-chair of the Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism of the Counter-Terrorism Implementation Task Force (the Human Rights Working Group), OHCHR has continued to promote respect for, and full compliance with, human rights obligations as part of effective counter-terrorism measures; support the exchange of good practices to promote and protect human rights, fundamental freedoms and the rule of law in the counter-terrorism context; and assist States in the implementation of the human rights aspects of the United Nations Global Counter-Terrorism Strategy, which runs through all pillars of the Strategy in line with the emphasis of Member States on the importance of its integrated and balanced implementation (see General Assembly resolution 68/276, paras. 2 and 7).

7. Under the leadership of OHCHR, the Working Group has continued to implement a long-term global project on human rights capacity-building for law enforcement officials involved in counter-terrorism, with the support of Denmark, Switzerland and the United States of America. The project continues to provide States with training and technical assistance to increase their knowledge, understanding and implementation of the international human rights framework and the rule of law in preventing, responding to and investigating terrorism threats. The project, by offering participating States access to human rights training, is aimed at encouraging operational police and security officials to embed respect for

[1] Other members include the Counter-Terrorism Committee Executive Directorate, the International Maritime Organization, the International Criminal Police Organization, the Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004), the Office of Legal Affairs of the Secretariat, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the United Nations Interregional Crime and Justice Research Institute and UNODC. ICRC, UNHCR, the Office for the Coordination of Humanitarian Affairs and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict participate as observers.

international human rights norms and the rule of law in their counter-terrorism programming and to increase cross-border and regional cooperation in this field.

8. The project included a second needs-assessment workshop, held in Ouagadougou in October 2013, which followed the first one in Amman earlier in 2013 and allowed the Working Group to identify the training needs of States. On the basis of this assessment, the Working Group has continued to focus on the development of human rights training modules on the international legal and policy framework, special investigation techniques, countering violent extremism, community-oriented policing, detention, interviewing techniques and the use of force, all specifically in the context of counter-terrorism.

9. The first training course under the project was conducted in Nigeria on from 16 to 18 January 2015 for 23 mid-ranking law enforcement and security officials. The training focused on the international legal framework for protecting human rights while countering terrorism, the legal limitations on the use of force; and the use of special investigative techniques. Each session gave practical guidance on how to deal with the complex issues that arise from countering terrorism in its various forms in compliance with international human rights law and international humanitarian law.

10. The Working Group has also expanded its series of basic human rights reference guides with funding support from the United Nations Counter-Terrorism Centre. Those guides serve as a practical reference to guide national action, provide checklists for national assessment processes and address capacity-building needs of States. As part of the project, the Working Group has published three more guides, on detention in the context of countering terrorism, conformity of national counter-terrorism legislation with international human rights law and the right to a fair trial and due process in the context of countering terrorism.[2] A human rights reference guide on the proscription of organizations is also under development.

11. Within the framework of the Counter-Terrorism Implementation Task Force, OHCHR has continued to highlight human rights concerns and to mainstream human rights and the rule of law across all of the activities of the Task Force and its working groups, in line with the Global Counter-Terrorism Strategy and General Assembly resolution 68/178. These include the Working Group on Supporting and Highlighting Victims of Terrorism, the Working Group on Border Management and Law Enforcement relating to Counter-Terrorism, the Working Group on Legal and Criminal Justice Responses to Counter Terrorism, the Working Group on the Protection of Critical Infrastructure, the Working Group on the Conditions Conducive to the Spread of Terrorism and the two Working Groups of the Whole — on National and Regional Counter-Terrorism Strategies and on Foreign Terrorist Fighters.

12. OHCHR contributed to two United Nations Counter-Terrorism Centre projects on the development of regional counter-terrorism strategies for the South African Development Community and the Central Africa region, highlighting the importance of human rights and the rule of law as the fundamental basis of effective, sustainable and legitimate regional counter-terrorism strategies. OHCHR also highlighted the need for a human rights-based approach at the Counter-Terrorism Implementation Task Force/European Union dialogues on

[2] Available from www.ohchr.org/EN/NewYork/Pages/Resources.aspx.

13 June 2014 and 6 July 2014 in New York and on 20 October 2014 in Brussels. The Assistant Secretary-General for Human Rights participated in the Counter-Terrorism Implementation Task Force coordination meeting in New York on 1 and 2 December 2014.

13. OHCHR deepened its engagement with civil society organizations during the reporting period on issues related to the implementation of the human rights aspects of the Strategy, as reflected in pillar I, which deals with measures to address conditions conducive to the spread of terrorism, as well as pillar IV (see para. 5 above). Civil society, through initiatives at the national and international levels, is crucial to effective and sustainable counter-terrorism activities and strategies that are in compliance with human rights and the rule of law. OHCHR participated in a retreat organized by the Global Centre for Cooperative Security, entitled "The next decade: Strengthening multilateral efforts for preventing and countering terrorism and violent extremism", on 8 and 9 June 2015 in New York, highlighting the need to ensure that multilateral efforts must heed international legal obligations.

14. In implementing its workplan for 2015, the Human Rights Working Group will continue to facilitate information exchange on human rights and rule of law issues, including capacity-building and good practice in the promotion and protection of human rights and the rule of law in the context of counter-terrorism. It will also identify gaps and weaknesses in counter-terrorism approaches taken by States and develop proposals for strengthening support to Member States on the promotion and protection of human rights and the rule of law in the context of counter-terrorism at the national, regional and global levels. Specific proposals will be developed on fair trial-related issues, gender and foreign fighters.

B. Counter-Terrorism Committee Executive Directorate

15. The Counter-Terrorism Committee and its Executive Directorate continue to address relevant human rights and rule of law issues in their assessment of Member States' efforts to implement Security Council resolutions 1373 (2001), 1624 (2005) and 2178 (2014).

16. On 14 May 2015, the Security Council issued a report on the implementation of resolution 2178 (2014) by States affected by foreign terrorist fighters (S/2015/338). The report was prepared by the Committee with the assistance of its Executive Directorate. It assesses the capacity of Member States to respond to the challenges posed by foreign terrorist fighters. The report discusses three areas that raise human rights concerns in the context of Member States' responses, namely the revocation of travel documents, the transfer within and between Member States of personal information of individuals and the criminalization of travel of foreign terrorist fighters.

17. On 26 May 2015, the Security Council issued an additional report on the gaps in the use of advanced passenger information and recommendations for expanding its use to stem the flow of foreign terrorist fighters (S/2015/377). The report highlights the need for Member States to ensure that their legislative framework incorporates the right to be protected against unlawful and arbitrary interference with privacy in the context of passenger data collection, retention, transmission and use.

18. In accordance with General Assembly resolution 68/178, the Executive Directorate continued to liaise with OHCHR, the Special Rapporteur on the promotion and protection of human rights while countering terrorism and other human rights mechanisms and mandate holders, including in relation to the preparation of, and follow-up to, country visits and the facilitation of technical assistance. In January 2015, the Executive Directorate convened a workshop in Mombasa, Kenya, aimed at furthering the implementation of resolutions 1624 (2005) and 2178 (2014). The workshop discussed strategies aimed at countering incitement to terrorism and enhancing dialogue among civilizations. OHCHR participated at expert level.

19. In June 2015, OHCHR briefed the Committee on the human rights and rule of law challenges posed by Security Council resolution 2178 (2014). The Office discussed the need to address the conditions conducive to terrorism, to ensure accountability for human rights violations as well as to ensure that measures aimed at stemming the flow of foreign fighters[3] comply with Member States' obligations under international human rights law. During the briefing, the Committee also explored new approaches towards encouraging Member States to uphold their international human rights obligations while countering terrorism. These include organizing meetings with relevant national authorities with human rights responsibilities during country visits by the Committee. In addition, the Executive Directorate has been requesting information from national authorities on the steps they take to ensure that draft counter-terrorism measures are subject to public review and comment by civil society and other stakeholders regarding compliance with international human rights law as well as other matters.

20. The Executive Directorate has also participated actively in other forums, including by making contributions to the design and implementation of technical assistance and capacity-building projects of the Human Rights Working Group, in which it actively participates. It has also worked with the United Nations Office on Drugs and Crime (UNODC) to promote respect for the rule of law and international human rights law in the investigation and prosecution of terrorism-related cases in the Maghreb region. The initiative, which is funded by the European Union, started in October 2013 and will span a period of four years. OHCHR participated in the inaugural workshop for beneficiary Member States held in Tunisia in June 2014. Under the initiative, UNODC provides national technical assistance to States, while the Executive Directorate seeks to promote good practices and regional cooperation.

21. Since the adoption of resolution 2178 (2014), the Committee and its Executive Directorate have also actively engaged Member States in a dialogue aimed at underscoring efforts towards countering violent extremism and empowering youth, families, women, religious, cultural and educational leaders within a human rights-compliant framework.

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[3] The term "foreign fighters" as used in the report of the High Commissioner for Human Rights to the Human Rights Council (A/HRC/28/28, para. 31) refers to individuals who leave their country of origin or habitual residence, motivated primarily by ideology or religion, and become involved in violence as part of an insurgency or non-State armed group in an armed conflict (even though they may also be motivated by payment). See Geneva Academy of International Humanitarian Law and Human Rights, *Foreign Fighters under International Law*, Academy Briefing No.7, October 2014.

C. Human Rights Council

22. In its resolution 25/7, the Council again urged all States to respect and protect all human rights while countering terrorism. It underscored the importance of accountability, calling on States to undertake prompt, independent and impartial fact-finding inquiries whenever there are plausible indications of breaches of their obligations under international human rights law as a result of any measures taken or means employed to counter terrorism and to ensure accountability.

23. In its resolution 29/9, the Council reiterated these and other concerns. It specifically urged States to take measures to ensure that counter-terrorism laws and implementing measures are consistent with and are applied in a manner that fully respects human rights, "in particular to ensure respect of the principle of certainty of the law by clear and precise provisions". It further acknowledged that the "active participation of civil society can reinforce ongoing governmental efforts to protect human rights and fundamental freedoms while countering terrorism".

24. The Council has also addressed with greater specificity some of the issues raised in resolutions 25/7 and 29/9. In its resolution 25/22, building on paragraph 13 of resolution 25/7 and previous resolutions, the Council urged States to ensure that any measures to counter terrorism, including the use of remotely piloted aircraft or armed drones, comply with their obligations under international law. It further called upon States to ensure transparency and to conduct prompt, independent and impartial investigations where there are indications of a violation caused by the use of armed drones. The Council decided to organize a panel discussion on the issue, which was held at its twenty-seventh session. A summary of the panel discussion was presented at the twenty-eighth session (A/HRC/28/38).

25. Following a report by OHCHR on the right to privacy in the digital age (A/HRC/27/37) and a panel discussion organized by the High Commissioner at the request of the Council (see A/HRC/28/39), both of which examined issues of mass surveillance on the grounds of national security, as well as other issues, the Council adopted resolution 28/16. In that resolution, the Council reaffirmed the right to privacy, recognized the global and open nature of the Internet and decided to appoint a special rapporteur on the right to privacy.

26. At its twenty-eighth session, the Council also adopted resolution 28/17 on the effects of terrorism on the enjoyment of human rights, in which it condemned all terrorist acts and expressed grave concern at their detrimental effects on human rights. A panel discussion on this subject was held at the twenty-ninth session of the Council (see A/HRC/30/64).

1. Universal periodic review

27. The Human Rights Council also addressed human rights issues in the context of counter-terrorism through the universal periodic review process. Its recommendations addressed a range of different issues. On a number of occasions, States were urged to ensure that legislation was compatible with international norms and standards. Concern was expressed regarding overbroad definitions of terrorism and related offences under domestic law, and it was recommended that legislation be subjected to regular review. There were also consistent calls upon States to abolish the death penalty, including for terrorism offences. The need to respect human rights and the rule of law and prevent violations during counter-terrorism

operations was also underscored. In this regard, the requirement to properly investigate alleged violations and bring perpetrators to justice was emphasized.

28. Recommendations were also made to States under review to ensure that counter-terrorism laws do not serve to undermine the rights of specific individuals and groups, including indigenous peoples, minorities, human rights defenders, refugees and stateless persons. States were advised to take protective measures against terrorist activities, and also to address the root causes of insecurity and radicalization. One recommendation highlighted the negative repercussions of both terrorism and unilateral coercive measures on national development plans and on the enjoyment of basic human rights by the State's citizens.

2. Special procedures

29. A key focus of the work of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has been on the use of remotely piloted aircraft in extraterritorial lethal counter-terrorism operations, which was the subject of his reports to the Human Rights Council and the General Assembly in March and September 2014, respectively (A/HRC/25/59 and A/69/397). These reports provide an overview of the deployment of drones and reported civilian casualty rates. The Special Rapporteur also surveyed relevant issues of international law, highlighting how some States take different positions in relation to the use of force and in terms of the application of international human rights law and international humanitarian law.

30. The Special Rapporteur participated in a number of related events, including a side event at the sixty-eighth session of the General Assembly on "Drones and the law" on 25 October 2013; a panel discussion held on 22 September 2014, during the twenty-seventh session of the Council, on "Ensuring use of remotely piloted aircraft or armed drones in counterterrorism and military operations in accordance with international law, including international human rights and humanitarian law"; and a hearing on "Drones and targeted killings: the need to uphold human rights" before the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe in Strasbourg.

31. On the right to privacy in the digital age, in February 2014, the Special Rapporteur took part in an expert seminar in Geneva hosted by the permanent missions of Austria, Brazil, Germany, Liechtenstein, Mexico, Norway and Switzerland and facilitated by the Geneva Academy of International Humanitarian Law and Human Rights. In his report to the General Assembly in September 2014 (A/69/397), the Special Rapporteur examined the use of mass digital surveillance for counter-terrorism purposes. He underlined that States had an obligation to respect the privacy and security of digital communications. He concluded that bulk access technology was inherently corrosive of online privacy and, in line with recommendations of the High Commissioner for Human Rights, highlighted the urgent need for States using such technology to revise and update national legislation to ensure consistency with international human rights law.

32. The Special Rapporteur has also addressed the human rights challenges posed by the fight against the Islamic State in Iraq and the Levant (ISIL) in a June 2015 report to the Council (A/HRC/29/51). In that report, he highlighted the obligation of the Security Council to act in the light of the gross violations committed by ISIL and the need for accountability. He also expressed concern regarding the broad

nature of some of the clauses contained in Security Council resolution 2178 (2014) and the possibility that the standard adopted for enforcement action could result in arbitrary enforcement action being taken (ibid., para. 42).

33. With respect to the need for accountability in the context of counter-terrorism activities, on 3 December 2013, the Special Rapporteur lodged third-party submissions in the cases *Al Nashiri v. Poland* (application No. 28761/11) and *Husayn (Abu Zubaydah) v. Poland* (application No. 7511/13) before the European Court of Human Rights. His submissions highlighted the duty of States to investigate allegations of secret detention, torture and rendition taking place on their territory and the way in which such investigations should be conducted when the material relevant to them engaged the State's interest in national security. Relatedly, on 9 December 2014, following the publication of a summary report by the United States Senate Select Committee,[4] the Special Rapporteur called upon the Government of the United States to bring to justice those responsible for the crimes of torture and enforced disappearance.

34. In a country visit to Chile from 17 to 30 July 2013, the Special Rapporteur examined the use of anti-terrorism legislation in connection with protests by indigenous Mapuche activists. In his report (A/HRC/25/59/Add.2), the Special Rapporteur formulated a number of key recommendations in the framework of a comprehensive and integrated national strategy for addressing the Mapuche question.

35. The threat to civil society from the abusive use of counter-terrorism legislation and measures has been a constant theme for the Special Rapporteur on the rights to freedom of peaceful assembly and of association. The Special Rapporteur has noted the "tendency in many States to view associations and peaceful assemblies as threats to national stability and security" (A/69/365). He has argued against derogation from obligations, stating that limitation measures, as provided for in the International Covenant on Civil and Political Rights, are adequate to combat terrorism or handle other security considerations (A/HRC/29/25/Add.3). The Special Rapporteur has written to Member States regarding the alleged resort to counter-terrorism legislation that is incompatible with international norms and standards.

36. In the context of measures purportedly taken to restrict terrorism funding and money laundering, the Special Rapporteur expressed concern at how Governments often treat businesses and civil society differently. He expressed concern at the fact that civil society organizations are singled out for greater scrutiny, including by Financial Action Task Force recommendation 8, underlining that there is no evidence that civil society is more prone than the private sector to money laundering activities or terrorism-related financial activity. He further highlighted that these restrictions, rather than legitimately advancing the fight against terrorism, are actually "used by some States as a cover for imposing politically motivated restrictions on civil society funding" (A/69/365). In a similar vein, in his 2013 report to the General Assembly (A/68/299), he underscored that any constraints on associations' ability to access foreign funding should be necessary in a democratic society and that common justifications offered by States, such as counter-terrorism measures, often did not meet that strict standard (see also A/HRC/23/39).

[4] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15397&LangID=E.

37. In his 2014 report to the Council (A/HRC/26/29), the Special Rapporteur explained how the use of national security or counter-terrorism legislation to restrict or prohibit the formation or registration of associations was often detrimental to the right to freedom of association of minority groups. Under the guise of fighting terrorism or extremism, associations comprised of minorities, including religious, linguistic or ethnic minorities, might be subjected to delays in registration, denial of registration, harassment and interference. He highlighted how States have often used such legislation to stifle dissent, repressing associations with views that are critical of the authorities. He underscored that "this legitimate interest should never be used as an excuse to silence critical or diverse voices". In his 2015 report to the Council (A/HRC/29/25), the Special Rapporteur highlighted how environmental and lands rights activists face criminalization of their activities and face severe charges and sentences, including for terrorist offences.

38. The Special Rapporteur's report following an official visit to Oman in September 2014 (HRC/29/25/Add.1) emphasized how important a free and diverse civil society is, that restrictions to free assembly and association rights are counterproductive and that marginalized groups are more likely to morph into extremist movements.

39. In his 2015 report to the Human Rights Council (A/HRC/29/32), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression focused on the use of encryption and anonymity to exercise the rights to freedom of opinion and expression in the digital age. The Special Rapporteur recalled that any restrictions on encryption and anonymity must meet the test of legality, legitimacy, necessity and proportionality. As encryption and anonymity enable and facilitate the rights to freedom of opinion and expression, the Special Rapporteur urged States to promote strong encryption and anonymity. He bemoaned current trends, whereby States have often failed to provide adequate public justifications to support restrictions. The report explains how, although encryption and anonymity can frustrate counter-terrorism officials and make surveillance more complicated, State authorities have not generally identified situations where a restriction has been necessary to achieve a legitimate goal. He maintained that "many laws and policies regularly do not meet the standards of necessity and proportionality and have broad, deleterious effects on the ability of all individuals to exercise freely their rights to privacy and freedom of opinion and expression".

40. The Special Rapporteur on extrajudicial, summary or arbitrary executions has addressed a number of themes in the context of counter-terrorism measures. In his 2014 report to the General Assembly (A/68/382), he looked at the issue of drones and targeted killings both within and outside the context of armed conflict situations. The report questions whether the various terrorist groups that call themselves Al-Qaida, or associate themselves with Al-Qaida, today possess the kind of integrated command structure that would justify considering them a single party involved in a global non-international armed conflict. The report also notes the view of the International Committee of the Red Cross (ICRC) that this type of non-international armed conflict is not and has not been taking place. It further states that claims that drones are more precise in targeting cannot be accepted uncritically, not least because terms such as "terrorist" or "militant" are sometimes used to describe people who are civilians and thus protected from attack under international humanitarian law.

41. The report concludes that the legal framework for maintaining international peace and the protection of human rights is a coherent and well-established system, reflecting norms that have been developed over the centuries and have withstood the test of time. Highlighting the fact that the more permissive targeting framework of the laws of war is often used instead, the Special Rapporteur calls for a more diligent application of the rules to ensure the protection of the right to life.

42. In his April 2014 report to the Human Rights Council (A/HRC/26/36), the Special Rapporteur examined domestic legal frameworks for the use of force. The report noted that in Kenya, a law that incorporated most of the international requirements risked being repealed and that the threat of terrorism was being used to legitimize far-reaching infringements of civil liberties during protest. More generally, the report concluded that States should not use emergency situations or terrorist threats as a pretext to erode the right to life by granting unchecked powers to use force.

43. In his report to the Human Rights Council in 2014 (A/HRC/25/60), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment focused on the scope and objective of the rule on the exclusion of evidence obtained by torture and other ill-treatment in judicial proceedings and in relation to acts by executive actors. The Special Rapporteur concluded that all actions of executive agencies should be reviewed under the absolute prohibition of torture and that the exclusionary rule should apply, by analogy, to the collecting, sharing and receiving of information by executive actors.

44. The Special Rapporteur expressed particular concern at the use of statements tainted by torture outside of "proceedings", narrowly defined, for other purposes, such as intelligence gathering or covert operations. He noted how cooperation in sharing intelligence between States had expanded significantly in the fight against terrorism and that some police, security and intelligence agencies had shown a willingness to receive and rely on information likely to have been obtained through torture and other ill-treatment and to share that information with one another outside of court proceedings, a practice made even more dangerous because of the secrecy and lack of transparency surrounding it. The Special Rapporteur reiterated that the absolute nature of the prohibition of torture and other ill-treatment meant that no exceptional circumstances whatsoever may be invoked as a justification for torture or other ill-treatment.

45. To ensure accountability in intelligence cooperation, truly independent intelligence review and oversight mechanisms should be established and enhanced. As a starting point for further development, the Special Rapporteur commended the guidelines proposed by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/14/46).

46. Following a series of consultations involving Member States, civil society, academia and others, in April 2015 the Working Group on Arbitrary Detention adopted the final text of its draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court.[5] The draft will be presented to the Council during its thirtieth session in September 2015. The draft principles and

[5] Available from www.ohchr.org/EN/Issues/Detention/Pages/DraftBasicPrinciples.aspx.

guidelines are of broad relevance to the counter-terrorism context but also include specific guidelines in the context of a state of emergency that threatens the independence or security of a State and in relation to those suspected of terrorism offences.

47. In the report on her official mission to Nigeria in 2014 (A/HRC/28/64/Add.2), the Special Rapporteur on minority issues noted her deep concern regarding the numerous deadly attacks carried out by Boko Haram, which had resulted in more than 2,000 deaths in the first half of 2014 alone. She underlined that Boko Haram provided a distorted interpretation of religious principles to justify its violent actions. The Special Rapporteur was impressed by numerous initiatives led by civil society and religious leaders to bridge the gap between communities in Plateau and Kaduna States. She urged the Government to set up and implement a comprehensive security and prevention strategy to combat unlawful actions by Boko Haram and other groups, in full compliance with human rights standards.

48. The Working Group on mercenaries is undertaking research on foreign fighters, which will be presented at the forthcoming session of the General Assembly. Following a visit to Tunisia between 1 and 8 July 2015, it issued some preliminary findings.[6] It had been told that foreign fighters were involved in direct hostilities or combat and were reported as perpetrators of a range of human rights abuses. The Working Group noted the absence of a specific national strategy to counter the phenomenon of foreign fighters. While acknowledging that the declaration of a state of emergency by the Government of Tunisia on 4 July 2014 was a measure to ensure greater security, given the broad potential for human rights restrictions flowing from the state of emergency, the Working Group urged the authorities to implement measures under it in conformity with international norms and standards.

49. Regarding the responses of States and the international community to increasing global foreign fighter activity, the Working Group recognized that concern was warranted with respect to the broad application of Security Council resolution 2178 (2014). The Working Group was encouraged by the comments of one Tunisian official, who had observed that the resolution should be more clear and specific, a position shared by the Working Group. It strongly recommended that any application of resolution 2178 (2014) be fully consistent with international human rights law. The Working Group further emphasized that a national action plan to address the foreign fighter phenomenon must balance punitive action with social measures and ensure the comprehensive adoption of human rights standards in all its elements.

50. In its report of 4 August 2014 (A/HRC/27/49), the Working Group on Enforced and Involuntary Disappearances noted that the number of cases transmitted to it demonstrated that enforced disappearance continued to be used across the world with the false and pernicious belief that it was a useful tool to preserve national security and combat terrorism or organized crime. It emphasized again that no circumstances whatsoever could be invoked to justify enforced disappearances (ibid., para 89). The Working Group continued to receive and respond to allegations in the context of counter-terrorism. For example, it wrote to the Government of Kenya expressing concerns about the alleged enforced

[6] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16219&LangID=E.

disappearance of 10 young men in Nairobi between 2011 and 2013 and other alleged human rights violations by the Anti-Terrorism Police Unit (see A/HRC/WGEID/104/1, paras. 71-78).

51. The Independent Expert on the promotion of a democratic and equitable international order noted that national and international terrorism had been used to justify huge increases in military spending and that focusing on the root causes of human insecurity was a more important way of tackling the problem (A/HRC/27/51, para. 22).

D. Human rights treaty bodies

52. The lack of clarity in domestic legislation concerning counter-terrorism remained a key concern for the Human Rights Committee during the reporting period. For example, the Committee recommended that Ireland introduce a definition of "terrorist acts" in its domestic legislation, which should be limited to offences that could justifiably be equated with terrorism and its serious consequences (CCPR/C/IRL/CO/4). It also highlighted excessively broad and vague definitions of terrorism, calling upon Israel to ensure that legislation was in full compliance with the International Covenant on Civil and Political Rights (CCPR/C/ISR/CO/4). In the context of concerns regarding lack of safeguards, it recommended that Sri Lanka take all measures to ensure that security measures contain clear prohibitions against arbitrary arrest and detention, safeguards against torture and protections for the rights to freedom of expression and association (CCPR/C/LKA/CO/5).

53. In reviewing the United States of America (see CCPR/C/USA/CO/4), the Committee expressed concern in relation to systematic practices of torture, ill-treatment or excessive use of force by members of the police or the security forces during arrest and/or interrogation of terrorism suspects. In relation to the practice of targeted killings in extraterritorial counter-terrorism operations using unmanned aerial vehicles, the Committee called for the State party to disclose the legal basis for specific attacks and ensure proper oversight of the use of drone strikes and investigations of alleged violations. The Committee specifically raised the issue of the lack of a timeline for closure of the Guantanamo Bay facility and called for expedition of the transfer of detainees designated for transfer. With respect to the Russian Federation (see CCPR/C/RUS/CO/7), the Committee called upon the Government to ensure accountability, including reparations for victims, in the context of a lack of investigations, prosecutions and convictions of State agents for wrongdoing in counter-terrorism actions.

54. At its 112th session, in October 2014, the Committee adopted its general comment No. 35 on article 9 (Liberty and security of person) of the International Covenant on Civil and Political Rights (CCPR/C/GC/35). In the general comment the Committee emphasizes that, in cases where States impose security detention without contemplation of a criminal charge, such detention presents severe risks of arbitrary detention in violation of the Covenant. It also underscores that the right to take proceedings for release from unlawful or arbitrary detention applies to all detention by official action or pursuant to official authorization, including security and counter-terrorism detention.

55. The Committee against Torture has expressed similar concerns to the Human Rights Committee regarding legislation and safeguards for detainees, and called upon Spain to review the detention regime with a view to its abolition (CAT/C/ESP/CO6). With reference to the United States, the Committee underscored the absolute prohibition of torture in the context of the use of extraordinary rendition, secret detention and abusive interrogation techniques. The Committee reiterated that no exceptional circumstances whatsoever, including any threat of terrorist acts, may be invoked as a justification of torture (CAT/C/USA/CO3-5).

56. The Committee on Enforced Disappearances has expressed concerns related to the frequent use of police custody, which may be extended several times in cases involving crimes of terrorism, recommending that France establish the right of appeal before a sitting judge, rather than the prosecution (CED/C/FRA/CO/1). It also expressed concerns regarding the use of incommunicado detention in Spain, which may extend for long periods in cases involving terrorism, during which accused persons do not have the right, inter alia, to appoint a lawyer of their own choosing, to speak in private with their assigned counsel or to inform a person of their choice of their detention or of their place of detention (CED/C/ESP/1). In this instance, it recommended that Spain adopt the necessary legislative and other measures to ensure the rights of all persons, regardless of the offence with which they are charged. The Committee also recommended to Germany that cooperation with third States in relation to counter-terrorism be conditional upon compliance with international obligations under human rights treaties (CED/C/DEU/CO/1).

III. Activities of the United Nations High Commissioner for Human Rights and his Office

57. In addition to its role as co-chair of the Human Rights Working Group of the Counter-Terrorism Implementation Task Force, OHCHR has continued to address issues related to the protection of human rights and fundamental freedoms while countering terrorism, and to make recommendations in this regard. In accordance with its thematic strategies for the period 2014-2017, OHCHR has prioritized support for Member States in their efforts to ensure that their security policies, strategies and measures are grounded firmly in respect for human rights and the rule of law. This includes assisting in the development and implementation of human rights-compliant security legislation; supporting security sector reform through a review of legal frameworks and support for the establishment of effective procedural safeguards and independent mechanisms for oversight; and supporting the design and delivery of human rights training to justice and security entities.

58. In his December 2014 report to the Human Rights Council (A/HRC/28/28), the High Commissioner focused on two related issues: legislative measures adopted by States in the context of counter-terrorism, and human rights issues related to the phenomenon of foreign fighters. The High Commissioner emphasized the importance of ensuring that States integrate compliance with their obligations under international human rights law into their efforts to stem the flow of foreign fighters by stepping up initiatives to address the conditions conducive to terrorism and counter violent extremism. While welcoming the affirmation of the importance of international law, including international human rights law, in Security Council resolution 2178 (2014), the High Commissioner raised concerns regarding the lack

of clarity and definitions in the resolution and the resulting potential for abuse. He also urged States to combat impunity and ensure accountability for any gross violation of international human rights law or serious violation of international humanitarian law.

59. In the report and elsewhere, the High Commissioner raised concerns regarding the compatibility of domestic counter-terrorism legislation with international human rights law, expressing concern at the human rights implications of the law on national security adopted by China on 1 July 2015 and a draft anti-terror law in Malaysia.[7]

60. In her briefing to the Counter-Terrorism Committee in October 2013, the previous High Commissioner highlighted areas of ongoing concern and urged the Committee to continue its efforts to address all human rights issues relevant to the implementation of Security Council resolutions 1373 (2001) and 1624 (2005), including by promoting such good practices as reviewing counter-terrorism legislation before adoption, time-limited laws, independent oversight bodies for law enforcement and intelligence agencies and periodic review of sanction measures. OHCHR briefed the Counter-Terrorism Committee in June 2015, focusing on the issue of foreign fighters. In the briefing, the Office highlighted the concerns raised in the December 2014 report of the High Commissioner (see para. 58 above) and underlined the need to take a three-pronged approach to tackling the issue, namely, addressing the conditions conducive to terrorism, accountability for violations and abuses and ensuring that any measures taken by States are consistent with their obligations under international human rights law.

61. OHCHR continued to address complex legal and policy challenges relating to new technologies that are of direct relevance to States' efforts to counter terrorism. From November 2013 to March 2014, the Office partnered with the United Nations University in a research project on the application of international human rights law to national regimes overseeing governmental digital surveillance. It also launched an open consultation in February 2014, inviting the input of stakeholders through a questionnaire on the right to privacy in the context of domestic and extraterritorial surveillance. Also in February 2014, the previous High Commissioner delivered a keynote address to an expert seminar organized by a group of States led by Germany and Brazil, and facilitated by the Geneva Academy of International Humanitarian Law and Human Rights, in which she outlined challenges to ensuring the right to privacy in the context of domestic and extraterritorial surveillance.

62. Drawing on the research panel, open consultation, expert seminar and other sources of information, as mandated by the General Assembly in its resolution 68/167, OHCHR submitted a report on the right to privacy in the digital age (A/HRC/27/37) to the Human Rights Council. In the report, OHCHR examined the protection afforded by international human rights law regarding privacy, including the meaning of "interference with privacy" in online communications, the definition of "arbitrary and unlawful" interference in that context and the question of whose rights are protected, and where. Following consideration of the report by the Council at its twenty-seventh session and the General Assembly at its sixty-ninth session, the Assembly adopted resolution 69/166, which included a number of proposed follow-up measures.

[7] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16210&LangID=E and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15810&LangID=E.

63. Issues of relevance in the context of counter-terrorism were also addressed during two expert panel discussions organized by OHCHR: the panel discussion on the right to privacy in the digital age, held on 12 September 2014 pursuant to Council decision 25/117, and the panel discussion on ensuring the use of armed drones in counter-terrorism and military operations in accordance with international law, held on 22 September 2014 pursuant to Council resolution 25/22.

64. The Office promoted greater integration of a gender perspective into the context of counter-terrorism at two events held in October 2014: the workshop on the theme "Advancing women's roles in countering violent extremism and radicalization that lead to terrorism" organized in Vienna by the Global Counterterrorism Forum and the Organization for Security and Cooperation in Europe, and the panel discussion on the theme "The role of women in countering violent extremism" organized by the United Arab Emirates and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) in the framework of the open debate of the Security Council on women and peace and security.

65. Pursuant to Human Rights Council resolution S-22/1, the High Commissioner dispatched a mission to Iraq to investigate alleged violations and abuses of international human rights law committed by ISIL and associated terrorist groups, with a view to ensuring full accountability. The report on the mission (A/HRC/28/18) was presented to the Council at its twenty-eighth session. In its resolution S-23/1, the Council requested the Office of the High Commissioner to "prepare a report on violations and abuses of human rights and atrocities committed by the terrorist group Boko Haram in the States affected by such acts, with a view towards accountability". At the twenty-ninth session of the Council, the High Commissioner presented an oral update as part of an interactive dialogue on Boko Haram.[8] The report (to be issued under the symbol A/HRC/30/67) will be presented to the Council at its thirtieth session. Prior to resolution S-23/1, the High Commissioner had already deployed staff to gather reliable and timely human rights information on the activities of Boko Haram and the response by States.[9]

IV. Conclusions and recommendations

66. **When counter-terrorism efforts neglect the rule of law and violate fundamental rights, they not only betray the values they seek to uphold. They may also further fuel violent extremism. Respect of human rights and the rule of law is an essential and inseparable part of successful counter-terrorism action. Through the reaffirmation of the United Nations Global Counter-Terrorism Strategy, Member States have committed themselves to an integrated and balanced implementation of all four pillars of the Strategy. In so doing, they have also reaffirmed their commitment to ensuring the promotion and protection of human rights, fundamental freedoms and the rule of law, as reflected in pillar IV, in the implementation of all pillars of the Strategy.**

[8] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16177&LangID=E.

[9] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15782&LangID=E#sthash.wmCyrLgB.dpuf.

67. In this regard, Member States are encouraged to address the linkages between measures to address the conditions conducive to the spread of terrorism, as reflected in pillar I of the Strategy, and measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism, as reflected in pillar IV.

68. In line with their commitments under the Strategy, Member States should promote respect for, and compliance with, human rights and the rule of law as part of holistic and effective counter-terrorism strategies at the national and regional levels. The ratification and effective implementation of all international human rights treaties should form an integral part of such strategies.

69. The Secretary-General calls upon Member States to give due attention to and implement recommendations on the promotion and protection of human rights in the counter-terrorism context made by United Nations human rights mechanisms, including with regard to the principle of legality and due process guarantees. This includes recommendations by the Human Rights Council under the universal periodic review process, relevant special procedures mandate-holders, the human rights treaty bodies and the High Commissioner for Human Rights, including in reports to the Human Rights Council.

70. One central theme that can be drawn from these recommendations is the need to ensure that counter-terrorism laws and measures are compliant with international human rights law. The Secretary-General thus reiterates the critical need for regular review of the compliance of counter-terrorism laws and practices with human rights norms and standards to ensure that these measures are specific, necessary, effective and proportionate. The validity of any exceptional measure should be restricted in time. The Secretary-General calls upon all States, as part of the legislative process, to ensure broad and inclusive consultations with all relevant stakeholders and a review of draft counter-terrorism legislation by relevant domestic bodies before adoption to ensure that legislation is compatible with international human rights law.

71. Member States' response to violent extremism and terrorism must be forward-looking, proactive and based on the promotion and protection of human rights and the rule of law in accordance with pillar IV of the Global Counter-Terrorism Strategy. This approach will be reflected in the United Nations plan of action on preventing violent extremism that the Secretary-General intends to submit to the General Assembly later this year.

72. The Counter-Terrorism Implementation Task Force and its entities, in all of their activities in support of the implementation of the Strategy, should continue to promote respect for human rights and the rule of law as the fundamental basis of the fight against terrorism, and in particular ensure that such assistance is compliant with international human rights law.

73. Bearing in mind the critical role of civil society in countering violent extremism, promoting dialogue, defending human rights and enhancing social cohesion and integration of marginalized communities, Member States, as well as the Counter-Terrorism Implementation Task Force and its entities, should facilitate space for civil society, enhance their engagement with and support its role in the implementation of the Strategy.

74. **In their reports on progress made in the implementation of the Strategy, Member States, as well as the Counter-Terrorism Implementation Task Force and its entities, are encouraged to include information on measures they have taken to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.**

75. **In regard to foreign fighters, Member States are urged to follow the three-pronged approach outlined by the High Commissioner: addressing the conditions conducive to terrorism, accountability for violations and abuses, and ensuring that any measures taken by States are consistent with their obligations under international human rights law.**